



Writ Appeal No.2825 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated:21.08.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.2825 of 2019
and C.M.P.No.18081 of 2019**

The General Manager,
Vellore – Thiruvannamalai District,
Co-operative Milk Producer Union Ltd.,
Sathuvachari, Vellore – 9.

... Appellant

Vs

Dr.Sripathy,
S/o.P.Dhanapal

.. Respondent

PRAYER: Writ Appeals filed under Clause 15 of Letters Patent Act, to set aside the order dated 24.01.2019 passed in W.P.No.20026 of 2019 and allow the present appeal.

For Appellant : Mr.R.Balaramesh

For Respondent : Mr.C.Prakasam



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JUDGMENT

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(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

This appeal had been directed against the order passed by the Writ Court dated 24.01.2019 made in W.P.No.20026 of 2019.

2. The respondent was an employee of the appellant Co-operative Milk Producers Union Limited. Against the respondent, a surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 [in short, 'the Act'] was initiated, which was decided in favour of the appellant and against the respondent, as against which, when appeal was filed before the Tribunal, which set aside the order except with regard to the responsibility of Rs.1,00,000/- to the respondent.

3. As against the said order, the appellant filed writ petition in W.P.No.21673 of 2019 and the respondent filed Civil Revision Petition in C.R.P.No.2627 of 2017 and both the cases are still pending.

4. In the meanwhile, he was suspended from service and on superannuation, he was not permitted to retire from service, but no



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separate disciplinary proceedings so far initiated by issuing any charge memo.

5. When that being the position, since the gratuity, encashment of earned leave and encashment of unearned leave on private affairs since has not been paid to the respondent, he had approached the Writ Court by filing writ petition in W.P.No.20026 of 2019.

6. The said writ petition was allowed by the order of the Writ Court dated 24.01.2019, as against which, the present appeal had been directed.

7. Mr.R.Balaramesh, learned counsel appearing for the appellant would contend that, against the respondent since surcharge proceedings is still pending as the writ petition filed by the Co-operative Milk Producers Union Limited i.e., appellant is pending and Rs.1,00,000/- fine imposed against the respondent also is pending in the CRP filed by him.

8. When that being the position, at this juncture he is not entitled to get back the gratuity amount, encashment of earned leave and



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encashment of unearned leave on private affairs. This position since was not considered in proper perspective and since the writ petition was allowed, aggrieved over the same, this appeal since has been filed, he seeks indulgence of this Court.

9. We have heard Mr.C.Prakasam, learned counsel appearing for the respondent also.

10. Insofar as the gratuity amount is concerned, even a dismissed employee is entitled for the same and moreover since no specific disciplinary proceedings has been initiated against the respondent so far, the likelihood of earning punishment at this juncture by the respondent, assuming, may not be possible at this length of time. With regard to the pendency of the writ petition and the Civil Revision petition pertaining to the surcharge proceedings is concerned as of now the latest order passed by the Tribunal is only to the extent of Rs.1,00,000/- and therefore, to that extent only if at all the amount has to be recovered from the respondent that can be retained, out of the amount payable to the respondent under the aforesaid three heads.



11. In the circumstances of the case as afore-stated, we do not find any error in the judgment of the learned Judge, which is impugned herein. But at the same time, since the respondent suffered with an order passed by the Tribunal against the surcharge proceedings for a sum of Rs.1,00,000/-, as against which, though he filed Civil Revision Petition, which is pending before this Court, the said amount of Rs.1,00,000/- can very well be retained by the appellant from the amount payable to him by way of gratuity as well as the encashment of earned leave and encashment of unearned leave on private affairs.

12. In the result, this Writ appeal is disposed of with the following orders:

- ◆ That the impugned order is sustained with the following condition:
- ◆ It is open to the appellant to retain a sum of Rs.1,00,000/- towards the amount to be collected from the respondent pursuant to the order passed by the Tribunal in the surcharge proceedings under Section 87 of the Act and insofar as the remaining amount is concerned under the three heads, for which, the direction was given by the learned Judge through the impugned order is concerned, that shall be calculated and be paid to the respondent.



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- ◆ Even though the superannuation period had come already and he was not expressly permitted to retire, at this length of time, since there has been no charge framed against him, the scope of conducting any disciplinary proceedings also is bleak that is the reason why, this direction is given in this order.

13. In view of the aforestated, this writ appeal is disposed of with the aforesaid direction. No costs. Connected miscellaneous petition is closed.

(R.S.K.,J.)

(K.B., J.)

21.08.2023

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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and
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